

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KAITLIN M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 2:24-CV-1535-DWC

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of the denial of her applications for Supplemental Security Income (SSI) benefits and Disability Insurance Benefits (DIB). Pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and Local Rule MJR 13, the parties have consented to proceed before the undersigned. After considering the record, the Court finds no reversible error and affirms the Commissioner's decision to deny benefits.

I. BACKGROUND

Plaintiff filed applications for SSI and DIB on June 29, 2022. Administrative Record (AR) 22. Her alleged date of disability onset is April 30, 2022. *Id.* Her requested hearing was held before an Administrative Law Judge (ALJ) on November 29, 2023. AR 39–66. On February

29, 2024, the ALJ issued a written decision finding Plaintiff not disabled. AR 19–38. The Appeals Council declined Plaintiff’s timely request for review, making the ALJ’s decision the final agency action subject to judicial review. AR 5–11. On June 27, 2024, Plaintiff filed a Complaint in this Court seeking judicial review of the ALJ’s decision. Dkt. 4.

The ALJ found Plaintiff had the following severe impairments: migraine headaches, generalized anxiety disorder, depressive disorder, and substance abuse managed by suboxone. AR 24. She found Plaintiff had the following residual functional capacity (RFC):

to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except she can frequently climb ramps and stairs but never ladders, ropes, or scaffolds, frequently balance, stoop, kneel, crouch, and crawl. She can tolerate occasional exposure to and can occasionally work around vibration, and hazards such as moving machinery or unprotected heights. She can perform work that involves simple routine tasks requiring no more than short simple instructions and simple work related decision making with few work place changes.

AR 28.

II. STANDARD

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of benefits if, and only if, the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

III. DISCUSSION

In her opening brief, Plaintiff argues the ALJ erred in assessing her subjective symptom testimony regarding her migraine headaches and in assessing the medical opinion evidence of Hong An Ngo, DO. Dkt. 9.

1 **A. Subjective Symptom Testimony Regarding Migraines**

2 Plaintiff challenges the ALJ’s assessment of her testimony about the severity and limiting
3 effects of her migraine headaches. Dkt. 9 at 2–9. Plaintiff testified she has migraines four to five
4 times per week. AR 57–58. They “can last anywhere from four hours to four days.” AR 47. They
5 make it “impossible to function,” cause “uncontrolled vomiting,” blurred eyesight, irritability,
6 constipation, stiffness, spasms, and numbness. AR 46–47, 56–57. The ALJ was required to
7 provide specific, clear, and convincing reasons for rejecting Plaintiff’s testimony. *See Ghanim v.*
8 *Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014); AR 29. The ALJ described much of the medical
9 evidence and gave several reasons for finding Plaintiff’s testimony unpersuasive, which met this
10 standard. *See* AR 29–31.

11 First, the ALJ discounted Plaintiff’s testimony based on her lack of emergency or
12 inpatient treatment. *See* AR 31. The ALJ can properly consider the conservative or limited nature
13 of treatment sought. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039–40 (9th Cir. 2008)
14 (upholding ALJ determination that “inferred [claimant’s] pain was not as all-disabling as he
15 reported in light of the fact that he did not seek an aggressive treatment program”).

16 The relevant inquiry for whether a claimant’s treatment was conservative turns not upon
17 whether the treatment sought was conservative in the abstract but, rather, upon whether a
18 claimant experiencing the symptoms testified to would be expected to seek further treatment. *See*
19 *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) (conservative treatment appropriate basis to
20 reject testimony because it suggests alleged pain was “not severe enough to motivate [the
21 claimant]” to seek further treatment); SSR 16-3p (ALJ may discount testimony where the “extent
22 of the treatment sought by [the claimant] is not comparable with the degree of the individual’s
23 subjective complaints”).

1 Here, Plaintiff testified she experienced extreme symptoms while experiencing migraines
2 (including changes in eyesight, uncontrolled vomiting, and full loss of functioning) and that her
3 migraines sometimes lasted for several days. *See* AR 46–47, 56–57. A reasonable mind could
4 conclude that an individual experiencing such symptoms would, at some point over a two- to
5 three-year period, seek emergency or inpatient treatment. “Where the evidence is susceptible to
6 more than one rational interpretation, it is the ALJ’s conclusion that must be upheld.” *Morgan v.*
7 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).¹ The ALJ’s finding was a
8 reasonable one and was “sufficient to discount [Plaintiff’s] testimony regarding severity.” *Parra*
9 *v. Astrue*, 481 F.3d 742, 750–51 (9th Cir. 2007).

10 Second, the ALJ pointed to evidence of improvement in Plaintiff’s condition from Botox
11 treatments during the relevant period. *See* AR 31. The ALJ described Plaintiff’s improvement
12 while summarizing the medical evidence. *See* AR 29–30. After the first several injections
13 Plaintiff received, she reported some improvement in her symptoms (*see* AR 562, 810, 831),
14 although she had been warned that it could take several months before the treatment “kick[ed]
15 in” (AR 562). After two appointments in 2023, she reported at least a 30 percent improvement in
16 the severity and duration of her migraines (AR 774, 710) and that she had less nausea (AR 710).
17 She reported over a 50 percent improvement after receiving her fifth injection in October 2023
18 (AR 663–64). From this evidence, the ALJ reasonably concluded Plaintiff’s symptoms improved
19 during the relevant period.

21 ¹ Plaintiff’s sole argument in response is that she has pursued appropriate treatment because she had been warned by
22 some providers against overusing medication. *See* Dkt. 9 at 6 (citing AR 319). But the Court cannot discern why
23 Plaintiff would necessarily be given further medication if she sought emergency or inpatient treatment; indeed, that
24 providers were concerned about overmedication also supports the opposite conclusion. Moreover, the treatment note
relied upon by Plaintiff (AR 319) cautioned her against using her medications in doses beyond those prescribed to
her but did not caution her against seeking further care that might result in additional prescriptions for her
medications.

1 Plaintiff testified—about a month after she indicated her symptoms improved over 50
2 percent—that her symptoms nevertheless made it impossible to function and caused uncontrolled
3 vomiting. AR 46–47. Although the evidence of improvement does not suggest Plaintiff was
4 asymptomatic, evidence of a significant (30 to 50 percent) improvement can reasonably be found
5 inconsistent with testimony of extreme, debilitating symptoms after that improvement. For this
6 reason, the ALJ reasonably found such substantial improvements reflected in the medical
7 evidence to be at odds with Plaintiff’s symptom testimony.² “Contradiction with the medical
8 record is a sufficient basis for rejecting the claimant’s subjective testimony.” *Carmickle v.*
9 *Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (citing *Johnson v. Shalala*, 60
10 F.3d 1428, 1434 (9th Cir. 1995)). “It is not the court’s role to ‘second-guess’ an ALJ’s
11 reasonable interpretation of a claimant’s testimony.” *Smartt v. Kijakazi*, 53 F.4th 489, 500 (9th
12 Cir. 2022).

13 Third, the ALJ discounted the opinion because Plaintiff “was able to attend all of her
14 consultations independently without any noted need to reschedule, and otherwise, was never
15 observed with poor balance, unable to ambulate normally, or experiencing any of the vomiting,
16 photophobia, or extreme phonophobia symptoms she has otherwise reported.” AR 30; *see also*
17 AR 31 (listing same conclusion as reason for rejecting Plaintiff’s testimony). This was, at the
18 very least, a proper consideration. “Although lack of medical evidence cannot form the sole basis
19 for discounting pain testimony, it is a factor that the ALJ can consider in [her] credibility
20 analysis.” *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

22 ² True, as Plaintiff argues (Dkt. 9 at 7–8), the evidence of improvement is not apparently inconsistent with her
23 testimony as to the frequency of her migraines; she testified she experienced four to five migraines a week and she
24 reported to providers that after injections she experienced about 12 per month (AR 663–64) or 17 to 20 per month
(AR 710). But this does not cast doubt upon the ALJ’s conclusion about the severity of her symptoms, the focus of
the ALJ’s discussion of Plaintiff’s subjective symptom testimony.

1 Here, Plaintiff testified she had migraines at least four days a week at the time she
2 testified, and, prior to her injections, had migraines daily, and that these migraines lasted at least
3 four hours. *See* AR 47, 57–58. Although, as Plaintiff points out (Dkt. 12 at 2), she only attended
4 one or two medical appointments per month, given the reported frequency of her migraines, one
5 might reasonably expect at least some of her alleged symptoms to manifest at those appointments
6 over the two- to three-year period covered by the medical record. Plaintiff did cancel one lab
7 appointment due to nausea (*see* AR 580–81), but this does little to counter the ALJ’s general
8 impression of a paucity of medical evidence corroborating her symptom testimony.

9 Plaintiff contends the ALJ’s assessment of the medical evidence was deficient because
10 she failed to address findings of hypertonia (an abnormal increase in muscle tone) in physical
11 examinations throughout the treatment record. Dkt. 9 at 5. Evidence of hypertonia may suggest a
12 possible cause of Plaintiff’s migraines or some of her symptoms, but the existence of hypertonia
13 on examination does not corroborate any particular symptoms alleged by Plaintiff, nor does it
14 say anything about the extent to which she experienced those symptoms. The only evidence in
15 the record tying Plaintiff’s symptoms to hypertonia consists of one provider suggesting in two
16 notes that hypertonia may generally worsen Plaintiff’s symptoms. *See* AR 319, 442. But even
17 this does not establish that notations of hypertonia are indicative of particular baseline symptoms
18 or that she had any particular inhibitions. Additionally, the provider’s suggestion was made in
19 June 2022, prior to Plaintiff’s injections, which the ALJ reasonably found improved her baseline
20 symptoms, so the notes were not probative as to Plaintiff’s post-injection functioning. Thus, the
21 evidence of hypertonia in the record does not cast doubt upon the ALJ’s assessment of the
22 medical evidence.

1 Finally, the ALJ reasonably found Plaintiff's travel, including a trip out of state to Disney
2 World, to be inconsistent with the extent of Plaintiff's alleged symptoms. *See* AR 32. Given
3 Plaintiff's testimony of frequent, debilitating symptoms, the ALJ could reasonably infer this was
4 inconsistent with her testimony. *See Tommasetti*, 533 F.3d at 1040 ("The ALJ could properly
5 infer from this fact [that the claimant traveled to Venezuela] that [he] was not as physically
6 limited as he purported to be.").

7 The ALJ gave specific, clear, and convincing reasons for rejecting Plaintiff's testimony.
8 The Court need not consider the ALJ's remaining reasons, as any error with respect to those
9 reasons would be harmless. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (an ALJ's
10 error in discounting subjective testimony "is harmless so long as there remains substantial
11 evidence supporting the ALJ's decision and the error does not negate the validity of the ALJ's
12 ultimate conclusion.") (quotation omitted).

13 **B. Medical Opinion of Dr. Ngo**

14 In August 2022, treating provider Dr. Ngo completed a form about Plaintiff's ability to
15 participate in work activities. *See* AR 846–49. He opined Plaintiff would be unable to participate
16 in work, looking for work, or preparing for work for more than zero hours per week. *See* AR
17 846. He based the opinion on Plaintiff's migraines, post-traumatic stress disorder (PTSD), and
18 anxiety. *See id.*

19 For applications, like Plaintiff's, filed after March 27, 2017, ALJs need not "defer or give
20 any specific evidentiary weight, including controlling weight, to" particular medical opinions,
21 including those of treating or examining sources. *See* 20 C.F.R. §§ 404.1520c(a), 416.920c(a).
22 Rather, ALJs must consider every medical opinion in the record and evaluate each opinion's
23 persuasiveness, considering each opinion's "supportability" and "consistency," and, under some
24

1 circumstances, other factors. *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 2022); 20 C.F.R. §§
2 404.1520c(b)–(c), 416.920c(b)–(c).

3 The ALJ found the opinion unpersuasive. AR 32. With respect to its supportability, the
4 ALJ found the opinion was not supported by Dr. Ngo’s “own observations of the claimant, who
5 was never noted as unable to ambulate, sit through exams, tolerate clinic lights or noise, and
6 otherwise, had normal mental status exams.” *Id.*

7 Because supportability concerns the objective medical evidence presented by the source,
8 the paucity of abnormal findings from Dr. Ngo was a proper basis for discounting the opinion.
9 *See* 20 C.F.R. §§ 404.1520c(c)(1); 416.920c(c)(1); *see also Stiffler v. O’Malley*, 102 F.4th 1102,
10 1107 (9th Cir. 2024) (affirming rejection of medical opinion that “included only conclusions
11 regarding functional limitations without any rationale for those conclusions” along with largely
12 normal mental status findings).

13 Plaintiff raises two arguments in response. First, Plaintiff argues the ALJ erred by failing
14 to consider the abnormal results of hypertonia and tenderness in some of Dr. Ngo’s treatment
15 notes. Dkt. 9 at 11. But Dr. Ngo’s treatment notes do not suggest a relationship between
16 Plaintiff’s migraines and hypertonia; Dr. Ngo was not the provider who hypothesized Plaintiff’s
17 headaches worsened due to hypertonia. *See* AR 319, 442. As discussed, although such evidence
18 may confirm a particular cause of Plaintiff’s migraines and some of her symptoms, it is not
19 probative as to which symptoms Plaintiff experienced and to what extent she experienced them.
20 Dr. Ngo’s notations of hypertonia and tenderness would not support an opinion that Plaintiff
21 would be unable to work for any amount of time.

22 Second, Plaintiff argues her migraines were “the primary basis” for the opinion, so the
23 lack of abnormal mental status examinations was inapposite. *See* Dkt. 9 at 11–12. But given Dr.

1 Ngo listed Plaintiff's PTSD and anxiety as impairments on which he was basing his opinion (AR
2 846), the ALJ reasonably interpreted the opinion as being partially based on those impairments.
3 Even if Plaintiff's migraines were the primary basis for the opinion, however, as discussed, the
4 ALJ reasonably found the migraine-related treatment records were insufficient to support Dr.
5 Ngo's opinion that Plaintiff would be unable to work any amount of time in a given week.

6 In sum, the ALJ properly discounted Dr. Ngo's opinion based on its lack of
7 supportability. The Court need not consider the ALJ's remaining reasons for rejecting the
8 opinion because any error with respect to those reasons would be harmless. *Molina*, 674 F.3d at
9 1115; *Woods*, 32 F.4th at 792–93 (finding proper consideration of one of supportability and
10 consistency factors to be adequate basis to affirm).

11 IV. CONCLUSION

12 For the foregoing reasons, the Court hereby **AFFIRMS** Defendant's decision denying
13 benefits.

14 Dated this 24th day of March, 2025.

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17 David W. Christel
18 United States Magistrate Judge
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